



भारत का राजपत्र The Gazette of India

आधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 15]
No. 15]

नई दिल्ली, शनिवार, जुलाई 27, 1985/ श्रावण 5, 1907
NEW DELHI, SATURDAY, JULY 27, 1985/SRAVANA 5, 1907

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(उत्तरा संज्ञा की छोड़कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications issued by the Ministries of the Government of India (other than the
Ministry of Defence)

भारत निर्वाचन आयोग

नई दिल्ली, 21 जून, 1985

आ. अ. 31— लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 की उप-धारा (क) के अन्वय में निर्वाचन आयोग 1985 का निर्वाचन अर्द्ध में 4 में इलाहाबाद उच्च न्यायालय (लखनऊ) बैंच के तारीख 6-5-1985 के निर्णय को एकदम प्रकाशित करता है।

[गं. 82/उप-खण्ड-लखनऊ/4/85(लखनऊ)]

अ. देश से,
जे. सी. चाधरी प्रवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 21st June, 1985

O. N. 31.—In pursuance of the sub-section (a) of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election

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Commission hereby publishes the judgement dated the 6th May, 1985, of the High Court of Judicature at Allahabad, Lucknow Bench, in Election Petition No. 4 of 1985.

[No. 82/UP-HP/4/85(LKW)]

By order,
J. C. CHAUDHARY, Under Secy.

IN THE HON'BLE HIGH COURT OF
JUDICATURE AT ALLAHABAD
(LUCKNOW BENCH, LUCKNOW)

Election Petition No. 4 of 1985
UNDER SECTION 81 OF THE REPRESENTATION
OF THE PEOPLE ACT, 1951

BETWEEN

Alisinghani Bhagqansingh Mahadavsingh

...Petitioner

Versus

Sri Rajiy Gandhi and others ...Respondents

Lucknow the 6th May 1985

Hon'ble Kaleshwar Nath, J.

By a Notification dated 20th November 1984 of the President of India, under Section 14 of the Representation of the People Act, 1951, (For short, the Act), the electors of "25-Amethi Parliamentary Constituency" (District Sultanpur) were called upon to elect members for the House of People (Lok Sabha). The petitioner and all the respondents were candidates at the election. As a result of the poll, respondent No. 1 Sri Rajiv Gandhi, was declared elected. On 12-2-1985 the present petitioner filed an election petition, under section 80 of the Act, for a declaration that the election of respondent No. 1, as aforesaid, is void under Section 100(1)(b) and Section 100(1)(d)(iv) of the Act. There is also a prayer to disqualify the respondent No. 1 for a period of 6 years for committing corrupt practice under Section 123 of the Act and also to declare section 8A to be ultra vires.

The election petition has come up for disposal before me under section 80A(2) of the Act. Notice were issued to the respondent No. 1 only and appearance has been put on his behalf. This order governs C.M.A. No. 15(E)-1985 filed by the respondent No. 1 to strike out Paras 8 to 19 of the election petition under Order 6 rule 16 C.P.C. and to dismiss/reject the election petition as not disclosing a cause of action. C.M. An. No. 33(E) of 1985 is the application of the petitioner in reply with a prayer to dismiss C.M. An. No. 15(E) of 1985 and to direct the respondent No. 1 to file his written statement.

Stated plainly and briefly, the petitioner's case is that the election of respondent No. 1 is void under Section 100(1)(d)(iv) of the Act on account of improper oath administered by the Returning Officer to candidates at the time of nomination, under Article 84(a) of the Constitution of India, inasmuch as the Returning Officer remained sitting in his chair and did not stand up while administering oath. It was next urged that the respondent No. 1 had committed corrupt practice under Section 100(1)(b) read with section 123 of the Act, of bribery, undue influence upon the elector and of the use of the machinery of government, namely the Returning Officer, the Assistant Returning Officer, and Police personnel, for furtherance of his prospects candidate.

In the petition, under Order 6 rule 16 C.P.C., it has been urged on behalf of the respondent No. 1 that the petitioner has not set forth a concise statement of the material facts and allegations pertaining Section 100(1)(d)(iv) and Section 100(1)(b), read with section 123 of the Act, nor has set forth the necessary particulars regarding the corrupt practices. In reply, the petitioner has reiterated that the necessary statement of material facts and particulars have been made:—

The petitioner is a practising Advocate and has addressed arguments personally. Sri S.C. Maheshwari Advocate has appeared on behalf of the respondent No. 1.

The requirements regarding contents of an election petition are to be found under Section 83 if the Act

which runs as follows :—

"83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies ;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the practice alleged to have committed such corrupt practice and the date and place of the commission of each such practice ; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings.

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

The expression "material facts" has been interpreted to mean facts which are necessary for formulating a complete cause of action and it has been held that if any one material statement is omitted from the pleading, the statement of the claim is bad vide *Roop Lal Sathi Versus Nachchattar Singh* (1983)(3) Supreme Court Cases 487) and *Samant M. Bal Krishan Versus George Fernandes and others* (1969 Supreme Court 1201).

In the commentary of Mulla on the Code of Civil Procedure, 1908 (1981 Edition) Volume I at page 206 the expression "cause of action" has been described to mean every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove in order to enable him to obtain a decree. In other words, a cause of action is a bundle of facts which is necessary for the plaintiff to prove in order to succeed in a suit. The various grounds on which an election may be challenged as void and invalid, are set out in Section 100 of the Act and the ingredients of every ground are included in the various clauses of that Section. In respect of the ground of corrupt practice set out in Section 100(1)(b) of the Act, the statutory elements are to be found in Section 123 of the Act. The various sub-sections of Section 123 dealing with bribery, undue influence appeal on ground of religion, promotion of enmity or hatred between different classes of citizens, publication of false facts regarding personal character and conduct of a candidate and other corrupt practices, set out their elements. In order to establish any of the grounds contained in Section 100 simpliciter or read with section 123 every fact requisite for satisfying the elements would be a material fact and must be set out in the election petition. The omission to set out even a single

element of such "material facts", would result in a failure to establish the particular ground which would constitute a failure of the case of action.

As against these requirements of the law as to what ought to be contained in an election petition, there are the provisions of Order VI Rule 16 C.P.C. which would indicate what the election petition could not contain.

Order VI rule 16 C.P.C. runs as follows :—

"16. Striking out pleadings.—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

- (a) which may be unnecessary, scandalous, frivolous or veritious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the Court."

The expression "frivolous" has been described Wobster's Third New International Dictionary (1971 Edition) Volume I page 913 as "something" of little weight or importance, having no basis in law or facts. "The expression "embarrassing" has been stated to mean, in the same Dictionary at page 739 of Volume I to place in doubt perplexity of difficulty." In the case of Dawry Versus Garrat (1878) 7. Ch.D. 473, it has been stated at page 483 that nothing is more embarrassing to a defendant than a number of statements which may be irrelevant and which the defendant therefore, does not know what to do. It has further been held that each party is entitled, ex debito justitiae, to have his case against him presented in an intelligible form so that he may not be embarrassed in meeting it. Under Order VI rule 16 such of the pleadings as suffer from the vice of being previous, vexatious or embarrassing may be struck out.

With this background of the law, pleadings of the petitioner may be examined parawise.

In paras 8 and 10 of the election petition, the petitioner stated that the Returning Officer administered oath to the petitioner on 23-11-1984 and the other candidates on 24-11-1984 while sitting in his chair, and that the proper oath should have been by the Returning Officer standing at that time. It is urged on behalf of the respondent No. 1 that the allegation in this regard is by the petitioner only with respect to himself, and not with respect to the respondent No. 1. It was next urged that the law did not require the Returning Officer to administer oath while standing. It is also contended that Section 100 (1)(d) of the Act requires that in respect of a ground of non-compliance with the provisions of the Constitution or the Act, the petition should also indicate that the result of the election, insofar as it concerns the returned candidate, has been materially affected thereby, but the petitioner has not made any such averment. It is, therefore, urged that the pleading is unnecessary and previous and deserves to be struck off.

The petitioner has not been able to show that Form III-A in the IIIrd Schedule to the Constitution of India, prescribed for oath or affirmation to be made

by a candidate, for election to the Parliament, under Article 84(a) of the Constitution of India, requires the Returning Officer to be in a particular position (Sitting or standing) at the time of making of oath by the candidate. The ground under Section 100(1)(d)(vi) of the Act has to be one of non-compliance of any provision of the Constitution or of the Act. In the absence of a specific provision in the Constitution or in the Act that a Returning Officer must remain in a standing position, at the time when oath or affirmation is made by a candidate, the ground urged cannot be said to exist.

There is also worth in the contention of the respondent No. 1 that the allegation regarding improper oath is specifically confined to the petitioner himself and has not been made specifically in respect of the respondent No. 1. In Para 10 of the election petition the petitioner has spoken about his own oath on 23-11-1984, but while dealing with the oath in respect of other candidates he has spoken of the Proceedings on 24-11-1984 about other candidate generally and not particularly to the respondent No. 1. The following sentence, in this connection, is significant :—

".....and the petitioner understands that the Returning Officer has administered the oath probably to all the candidates from 25, Amethi Parliamentary Constituency while sitting and not standing." (Emphasis supplied).

The expression 'understands' and 'Probably' are so vague and indefinite that they cannot be made applicable to the respondent No. 1 personally. On the face of it, therefore, the infirmity would attach to the candidature of the petitioner himself and cannot be affirmatively attached to the respondent No. 1.

There is also substance in the contention of Sri Maheshwari that the petitioner has not specifically pleaded that the result of the election, insofar as the respondent No. 1 is concerned, has been materially affected by non-compliance with the supposed provisions regarding the manner of the candidates taking oath. The pleading, therefore, is unnecessary as well as frivolous under clause (a) of order 6 Rule 16 C.P.C.

The following corrupt practices have been alleged by the petitioner :—

1. According to para 11 of the election petition the respondent No. 1 sought "the assistance through Returning Officer and police Department to Prevent the petitioner not to do the election campaign, or to withdraw the nomination papers." It was added that on 28-11-1984 the Assistant Returning Officer asked the petitioner as to what was his purpose of contesting the election against the Prime Minister and if the petitioner could inform the purpose, the Assistant Returning Officer could save the petitioner from the action of the police. It was added that the Assistant Returning Officer threatened, induced the petitioner to withdraw from the election and save himself from Police action. Under the fear of police action, as threatened by the Assistant Returning Officer, the petitioner left Sultanpur. This, according to the petitioner, is a corrupt practice under section 123(1)(A) (a) of the Act.

Learned counsel for the respondent No. 1 points out that the first part of this allegation, regarding assistance through the Returning Officer and the Police Department to prevent the petitioner from making election campaign and to induce him to withdraw his nomination, does not indicate what and whose assistance was sought. It is pointed out that the expressions "assistance through Returning Officer and police Department" are extremely vague because they do not set out the material facts in this regard. Section 83(1)(a) of the Act requires a concise statement of the material facts. If assistance through the Returning Officer/Police Department was considered to be a basis of the corrupt practice, it was necessary for the petitioner to set out exactly what assistance was sought. Again, the expression "through Returning Officer and Police Department" cannot be interpreted to mean "of Returning Officer and Police Department." The petitioner says that he intended the expression 'through' to mean 'of'. This contention cannot be accepted because the expression actually used by the petitioner has to be taken into consideration and not what he intended it. The allegation is, therefore, vague.

In the later part of para 11, a specific allegation has been made against the Assistant Returning Officer. Learned counsel, counsel for the respondent No. 1 says that the Assistant Returning Officer has not been alleged to have extended the impugned threat or inducement to the petitioner acting on behalf of the respondent No. 1. It is pointed out that a corrupt act of bribery, under Section 123(1) (A) of the Act, must be "by a candidate or his agent or by any other person with the consent of a candidate or his election agent." The Assistant Returning Officer could fall under the category of "another person", but the further requirement is only that such person must act "with the a candidate or his election." It is in the election petition that the Assistant Returning Officer had done any of the impugned acts with the consent of the respondent No. 1 or his election agent. This pleading of the corrupt practice, therefore, lacks in material facts under Section 83(1)(a) of the Act, and therefore, does not constitute a ground recognised by Section 100(1)(b) of the Act. The pleading is frivolous.

2. In para 12 of the election petition it is urged that the respondent No. 1 had offered the bribe of abolishing compulsory Deposit to the voters if he was elected and returned to power. This offer, according to the petitioner, was printed in the *The Daily* and *'The Times of India'* Bombay on 6-12-1984. The petitioner alleged that the offer constituted a bribe within the meaning of Section 123(1)(A)(B) of the Act. He filed one copy each of the issues of the two newspapers, along with the election petition. It was urged on behalf of the respondent No. 1 that the pleading is incomplete because the particulars regarding time, date and place when the statement was made or what exactly the statement had been made, was not set out. It was next said that in any event the matter regarding abolition of compulsory Deposit Scheme was subject-matter of the Election Manifesto of the respondents party and, therefore, it could not be a corrupt practice at all. It appears to

me that in order to furnish a concise statement of the material facts, it was necessary for the petitioner to set out the actual statement made by the respondent No. 1. Further, the date and place where the statement was made is also required to be stated. In the absence of these facts, the pleading of corrupt practice would be incomplete and the allegations would be vague. (See the case of *Nihal Singh v. Rao Birandra Singh* and another) (1970) 3 S.C. Cases 239. In this case, the petitioner has not set out the actual statement made by the respondent No. 1 which is considered to be the promise for inducing the voters constituting the practice of bribe. If the petitioner has purported to utilise the public news items in the two public newspapers, namely, *The Daily* and *The Times of India*, dated 6-12-1984, filed by him along with the election petition, to show the statements which the respondent No. 1 is alleged to have made in this connection, the pleading would not be entertainable because a copy of the said newspapers was not furnished to the respondent No. 1 along with the copy of the election petition. That would offend against the provisions of section 81(3) of the Act and would call for the dismissal of the election petition under Section 86(1) of the Act, because the newspaper issue could not be treated to be evidence, but an integral part of the election petition. The infirmity would be hit by the decision in the case of *M. Karunanidhi v. Dr. H. V. Hande and others* (1983) 2 Supreme Court Cases 473.

As I go through the two issues of the aforesaid newspapers, I notice that they do not contain any statement made by the respondent No. 1 himself. They only contain news from the Election Manifesto of the Congress (I) party. It is clear, therefore, that the facts regarding this corrupt practice are not attributable to the respondent No. 1 personally.

It further appears to me that the declaration of an intention to abolish compulsory Deposit Scheme is a declaration of the policy of a political party and cannot constitute a bargain for which the election could be induced to vote for the respondent No. 1 as contemplated by Section 123(1)(A)(b) of the Act. This position would be clear from the case of *Surinder Singh v. Haridal Singh and others* (1985) 1 S.C. Cases 91 where reliance has been placed upon the earlier decision in the case of *Bhanu Kumar Shastri v. Mohanlal Sukhadia and others* (A.I.R. 1971 Supreme Court 2025). For these reasons this ground is not sustainable.

3. In Para 13 of the election petition it is urged that the respondent No. 1 had published a statement on 6-12-1984 in all the leading newspapers of the country that he would root out corruption. It was urged that the respondent No. 1 knew that statement to be a false one. The contention on behalf of the respondent No. 1 is that the allegation of a false statement, relevant as a corrupt practice under Section 123(4) of the Act, must relate to the "personal Character or conduct of any candidate." It is pointed out that there is absolutely no allegation that this statement by the respondent No. 1 concerned any of the candidates in the election. The petitioner has not been able to show that he attributed the so-called false statement of the respondent No. 1 to any matter

of personal character or conduct of any candidate. The pleading, therefore, is wholly frivolous. The petitioner also made certain allegations against some person in this paragraph which are wholly scandalous and irrelevant; at the time of hearing he did not press them. The pleading, therefore, cannot be sustained.

4. In paragraph 14 the petitioner alleged that the respondent No. 1 induced and influenced the voters through the programmes of his mother Late Smt. Indira Gandhi and demanded sympathy votes in her name which constituted a corrupt practice under Section 123(3) of the Act. The contention on behalf of the respondent is that no particulars of the statements made, influencing, inducing or demanding sympathy votes from the voters, had been set out. It was also urged that projection of the achievements of the respondent No. 1's political party or of the programme of Late Smt. Indira Gandhi, Prime Minister, did not fall within the scope of the corrupt practice at all and, therefore, the ground was wholly mis-conceived and vague. The contention on behalf of the respondent No. 1 is perfectly correct. Seeking sympathy votes in the name of a dead person, if at all, cannot be considered to be a corrupt practice at all; it is not connected with any religion or ritual. Further, no specific averment has been made of a particular statement by which the so-called influence or inducement was made. It is necessary in law to set out the actual statements in an election petition which are alleged to be the basis of a corrupt practice. That having not been done, the pleading is frivolous and embarrassing.

5. In para 15 of the election petition, the corrupt practice of incurring or authorising of expenditure, in contravention of section 77 of the Act, was alleged. That practice falls under section 123 (123(6) of the Act). Seven items of expenditure are stated setting out an expenditure of Rs. 83 lacs and 50 lacs and 50 thousands. Two lakh posters under an estimated cost of "not less than Rs. 5/- each" are alleged to have been pasted by the respondent No. 1 on the walls. The allegation, as it stands, is that the respondent No. 1 himself pasted these two lakh posters which, on the face of it, is an impossibility. The respondent No. 1 than is said to have "got painted on all the trees" in the constituency the symbol of hand and his name at a cost which could be estimated "not less than Rupees one lac 50 thousand." The respondent No. 1 was next alleged to have "incurred expenditure on painting on all the walls of the houses and shops etc." in the constituency, whose expenditure was estimated to be not less than Rupees one lac. The respondent No. 1 was next alleged to have "printed" dummy ballot papers which cost not less than Rs. 3/- each. More than eight lakh in number were printed, whose cost would work out to be 24 lacs. The expression is that the respondent No. 1 printed the dummy ballot papers. Similarly, it was alleged that the respondent No. 1 "printed cloth banners" more than ten thousand in number at an estimated cost of not less than Rs. 100 each. Again, it was alleged that the respondent No. 1 "printed posters" with specified words, more than two lakhs in number, each costing Rs. 50/-, at a total cost of Rs. 30 lakhs. It was lastly stated that the respondent No. 1 "got prepared metal

hand on metal rods", more than one thousand in number at a cost of more than Rs. 700/- each, total Rs. 7 lacs.

The contention of learned counsel for the respondent No. 1 is that the material mentioned by the petitioner is purely conjectural and that the verification of the fact, both in the petition as well as in affidavit in support thereof, is described as "sources of estimate" which is not contemplated by the relevant provisions of the law. A verification of the petition is required to be done in accordance with the provisions of Code of Civil Procedure under Section 83(1)(c) of the Act. The affidavit has to be sworn in Form 25 of the Conduct of Elections Rules, 1961, read with Rule 94A. Under order 6 rule 5(2) C.P.C. a pleading is to be verified by the maker thereof, either of his own knowledge or upon information received and believed to be true. Form 25 aforesaid similarly requires the facts deposed to be true to the knowledge of the deponent or to be true of his information. None of these contemplate a source of mere estimate. It is also noticeable that the expression "sources of estimate" set out by the petitioner, both in the verification of the election petition and in the affidavit in support of corrupt practices, is not followed by the further expression that the petitioner believed the said sources to be true. The result is that the pleading is not pleading at all. While it must be stated that the election petition is not liable to be dismissed on account of these defects because Section 86 of the Act does not consider these infirmities to be ground for dismissal of the election petition but the fact that the pleading has neither been certified nor the affidavit sworn in the manner specified by the law, it renders the pleading to be inadmissible. Unsupported by the requisite verification or affidavit, the pleading cannot be said to have an recognisable in law. It is not pleading at all and in that sense was unnecessary under order 6 rule 16(a) of Code of Civil Procedure. The pleading is, therefore not sustainable.

6. In paras 16 and 17 of the election petition it is urged that the respondent No. 1 committed the corrupt practice of taking the assistance of police in furtherance of his poll prospects. It was said that the respondent No. 1|Prime Minister|Government of India posted the Police in and below the house of the petitioner in Ulhasnagar, District Thane, (Maharashtra). names of 5 persons so posted were given. It was added that on 28-11-1984 the Assistant Returning Officer, Sultanpur, put the petitioner under fear as to why he was contesting the election and that on account of fear he left the constituency a for his home town of Ulhasnagar on that date. He added that even at Ulhasnagar the Police People and the C.I.D. Branch enquired from him as to why he was contesting the Lok Sabha election from Amethi. The Police, according to the petitioner, reained posted at his house throughout from 11 or 12-12-1984 and followed him wherever he went. that mistering courage he came over to Sultanpur on 19-12-1984, accompanied by the Police of Ulhasnagar, which took him to the Kotwal of P.S. Kotwali of Sultanpur. At Sultanpur two constables were posted with him who, according to the petitioner, moved with him throughout his election campaign, taking notes of the doings of the petitioner. It is said that on account of the presence of these Police constable, the petitioner

could not do his campaigning as he was under constant fear of the Police. On 22-12-1984 the petitioner visited his Gauriganj Assembly Constituency again in the company of the two Police constables. On 23-12-1984 the petitioner left Sultanpur for his home town with a letter "acknowledged by the Commissioner of Police Sultanpur, for giving permission to the petitioner" as per copy of the letter attached by him.

The petitioner's complaints is that in this manner the petitioner could not campaign freely for the purposes of his election and that the manner in which the Police resigned in his company is discriminatory because similar treatment was not given to the respondent No. 1. In the letter of the petitioner, addressed to the Superintendent of Police, Sultanpur, and annexed to the petition, the petitioner mentioned that he was leaving Sultanpur Amethi Parliamentary Constituency on that date, 23-12-1984, for which he required permission and that the two guards posted with him were returned forth with. The petitioner expressed his thanks to the Superintendent of Police.

Learned counsel for the respondent No. 1 has rightly urged that there is nothing in these averments in the election petition to connect the respondent No. 1 with the postings, or performance of the duties of the police personnel as the guards of the petitioner. The petitioner has not been able to indicate any material fact which would show that it was the respondent No. 1 who had obtained or procured the services of the Police personnel in the manner indicated by the petitioner in furtherance of his prospects as an election candidate. The statement in Para 16 that "respondent No. 1 [Prime Minister] Government of India posted the Police..." is too vague and indefinite either to indicate that the posting was done by the respondent No. 1, himself or that it was done for the furtherance of the poll prospects of the respondent No. 1. Indeed, the copy of the letter, dated 23-12-1984, referred to above, contains the petitioner's own admission that the Police personnel at his disposal were his guards. The pleading lacks in material facts and is irrelevant.

In Para 19 of the election petition it has been stated that the respondent No. 1, Sri Rajiv Gandhi, being the Prime Minister of India has appointed all the Cabinet Ministers and accordingly all the employees of all the Ministries are the employees of the respondent No. 1, who had committed the corrupt practice through various employees and himself under Section 123 of the Act. The contention of learned counsel for the respondent No. 1 is that these averments in the election petition are vague, meaningless and irrelevant and do not constitute a plea of corrupt practice. The contention is sound. The pleading is absolutely frivolous because it has no existence in the eyes of law : it does not set out any of the material facts as contemplated in Section 83(1)(a) and (b) of the Act.

The last ground urged and contained in para 18 of the election petition is that Section 8A of the Representation of People Act 1951 is liable to be declared ultra vires of the Constitution of India. According to learned counsel for the respondent No. 1 the question of validity of any provision of the Act is beyond the scope of the election petition. The contention must

be held to be correct because the High Court, dealing with an election petition, exercises a special jurisdiction which must be confined to the limits of the Representation of the People Act 1951. It has been consistently held that election disputes are not causes at Common Law or Equity, but are strict Statutory proceedings and that an election can be held void only if one or the other of the grounds, set forth in Section 100 of the Act, is attached. This position is clear from the decisions in the cases of (1) Surinder Singh v. Hardial Singh and others (1985) I.S.C. Cases 91 and (2) Arun Kumar Bose v. Mohd. E-Furkan Ansari and others (1984) 1 Supreme Court cases 91 and (3) Jagan Nath v. Jaswant Singh (A.I.R. 1954 S.C. 210). This election petition is concerned with the validity of the election of the respondent No. 1. Since that question has to be examined only in the light of the grounds, available under Section 100 of the Act, which does not contemplate a ground of vires of any Act or Rule, such question would be beyond the scope of the election petition.

No other point arises from the election petition.

The result of the above observation is that the pleadings of all the facts, set up by the petitioner in the various paragraphs of the election petition, discussed above, must be struck out. The consequence of that position is that the election petition must be held not to disclose a cause of action within the meaning of Order 7 rule 11 C.P.C. Since there is no cause of action, the trial of this election petition must be held to have arrived at its conclusion within the meaning of Section 98 of the Act. The only result at such conclusion is that the election petition must be dismissed under clause (a) of Section 98 of the Act. It will be found in the case of Madan Lal v. Zargham Haider and others (A.I.R. 1958 Allahabad 596) (D.B.) that where the pleadings in an election petition are struck out, no cause of action would be left which could be investigated by the Court and that was a point relating to the merits of the petition so that the dismissal of the election petition on the ground that it discloses no cause of action must be held to be a decision of the petition on merits under Section 98 of the Act.

C.M. An. No. 15(E) of 1985 is allowed. The petitioner's reply thereto, contained in C.M. An. No. 33(E) of 1985, is dismissed, and Paragraphs 8 to 19 of the election petition are struck out, with the result that the election petition does not disclose a cause of action.

Accordingly, the election petition is dismissed with costs.

Dated May 6, 1985.

Sd/-

KAMLESHWAR NATH

राज्य निर्वाचन, 6 मई, 1985

प्रवेश

आ० अ० १०.—कल. निर्वाचन अ योग का समाधान हुआ गया है कि विमर्श 1984 में हुए लोक सभा के साधारण निर्वाचन के लिए निर्वाचन क्षेत्र 2 उद्योग

में न-किन्हीं सचर संस्थाएँ निर्वाचन क्षेत्र से निर्वाचित लड़ने वाले अभ्यर्थी श्री मुकेश मुंजाल 124 डा० मुखर्जी नगर दिल्ली लोक प्रतिनिधित्व अधिनियम 1951 तथा तदर्थीय बनाए गए नियमों द्वारा यथा अवधिगत अपने निर्वाचन खर्चों का लेखा दाखिल करने में असफल रहे हैं।

और यथा उक्त अभ्यर्थी ने उसे सम्पत्ति अवरुद्ध करने के लिए इस असफलता के लिए कोई कारण प्रस्तावित नहीं किया है और निर्वाचन आयोग का समाधान ही यथा है कि उसके पास उक्त अवधिगत के लिए कोई पर्याप्त कारण अवस्था व्यावहारिक नहीं है।

अतः अब उक्त अधिनियम की धारा 10 के अनुसरण में निर्वाचन आयोग उक्त श्री मुकेश मुंजाल को संसद में किसी भी सदस्य के या राज्य की विधान सभा और अथवा विधान परिषद के सदस्य चुनने और चुनने के लिए इस आदेश की शर्तों से तीन वर्षों की वास्तविकता के लिए निरहित घोषित करता है।

[सं० 76/दिल्ली-नो० सं०/85]

New Delhi, the 8th July, 1985

ORDER

O. N. 32.—Whereas the Election Commission is satisfied that Shri Mukesh Munjal, 124, Dr. Mukherjee Nagar, Delhi a contesting candidate at the General Election to the Lok Sabha held in December, 1984 from 6-Delhi Sadar Parliamentary Constituency in the Union Territory of Delhi has failed to lodge the account of his election expenses in the manner as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas the said candidate, even after due opportunity has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the

said Shri Mukesh Munjal to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. 76/DL-HP/85]

नई दिल्ली, 21 जुलाई, 1985

भा० अ० 83.— लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) की धारा 13क की उपधारा 1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, पंजाब सरकार के परामर्श, से श्री पी० एल० वैष्णव के स्थान पर श्री एम० एल० कपूर, आई०ए०एस०, वित्तीय आयुक्त (विकास) को उनके कार्य भार सम्भालने की शर्तों से अगले आदेशों तक पंजाब राज्य के मुख्य निर्वाचन अधिकारी के रूप में एतद्वारा नामनिर्देशित करना है।

[सं० 154/पंजाब/85]

आदेश के,

अ. नं० 154/पंजाब, सचिव

New Delhi, the 12th July, 1985

O. N. 33.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Punjab hereby nominates Shri S. L. Kapur, IAS, Financial Commissioner (Development) as the Chief Electoral Officer for the State of Punjab with effect from the date he takes over charge and until further orders vice Shri P. H. Vaishnav, IAS.

[सं० 154/पंजाब/85]

By orders,

R. P. BHALLA, Secy.